

MT LEGISLATIVE HISTORY

Chapter 314 1987

Bill H (S) 313

Original bill & hist. ✓C

H. Committee on Business & Labor

S. Committee on Labor & Employment

Hearing Date(s) Mar 13 ✓C

Hearing Date(s) Feb 17 ✓C

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 C

 C

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Date Out Mar 13 ✓C

Feb 17 ✓C

Did this bill originate in an interim committee? Yes No

Committee

Report

SENATE FINAL STATUS

2/13 HEARING
3/13 TABLED IN COMMITTEE

SB 311 INTRODUCED BY HOFMAN, S., MCCALLUM, KEATING, ET AL.
LIMIT CHALLENGES TO LOCAL INITIATIVES

2/10 INTRODUCED
2/10 REFERRED TO JUDICIARY
2/16 HEARING
2/18 TABLED IN COMMITTEE

SB 312 INTRODUCED BY BROWN, R.
INCREASE OF 10 CENTS IN CIGARETTE TAX TO EQUALIZE
PART OF TEACHER RETIREMENT LEVY

2/10 INTRODUCED
2/10 REFERRED TO TAXATION
2/10 FISCAL NOTE REQUESTED
2/17 FISCAL NOTE RECEIVED
3/04 HEARING
3/06 TABLED IN COMMITTEE

SB 313 INTRODUCED BY BLAYLOCK
REVISE PROCEDURE FOR DETERMINING STATUS AS AN
INDEPENDENT CONTRACTOR
BY REQUEST OF DEPARTMENT OF LABOR & INDUSTRY

2/10 INTRODUCED
2/10 REFERRED TO LABOR & EMPLOYMENT RELATIONS
2/17 HEARING
2/18 COMMITTEE REPORT--BILL PASSED
2/20 2ND READING PASSED 49 0
2/23 3RD READING PASSED 48 0

TRANSMITTED TO HOUSE
2/24 REFERRED TO BUSINESS & LABOR
3/13 HEARING
3/13 COMMITTEE REPORT--BILL CONCURRED AS AMENDED
3/17 2ND READING CONCURRED 92 1
3/18 3RD READING CONCURRED 94 0

RETURNED TO SENATE WITH AMENDMENTS
3/23 2ND READING AMENDMENTS CONCURRED 48 0
3/24 3RD READING AMENDMENTS CONCURRED 49 0
3/26 SIGNED BY PRESIDENT
3/27 SIGNED BY SPEAKER

3/27 TRANSMITTED TO GOVERNOR
4/01 SIGNED BY GOVERNOR
CHAPTER NUMBER 314 EFFECTIVE DATE: 7/01/87

SB 314 INTRODUCED BY HAMMOND
EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME
COMPENSATION

2/10 INTRODUCED
2/10 REFERRED TO LABOR & EMPLOYMENT RELATIONS
2/17 HEARING
2/18 COMMITTEE REPORT--BILL PASSED AS AMENDED
2/20 2ND READING PASSED 49 0
2/23 3RD READING PASSED 49 0

TRANSMITTED TO HOUSE
2/24 REFERRED TO BUSINESS & LABOR

SENATE BILL NO. 313

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

FEBRUARY 10, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
FEBRUARY 18, 1987	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 19, 1987	PRINTING REPORT.
FEBRUARY 20, 1987	SECOND READING, DO PASS.
FEBRUARY 21, 1987	ENGROSSING REPORT.
FEBRUARY 23, 1987	THIRD READING, PASSED. AYES, 48; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 24, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON BUSINESS & LABOR.
MARCH 13, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 17, 1987	SECOND READING, CONCURRED IN.
MARCH 18, 1987	THIRD READING, CONCURRED IN. AYES, 94; NOES, 0.
	RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 21, 1987

RECEIVED FROM HOUSE.

ON MOTION, CONSIDERATION PASSED
FOR THE DAY.

MARCH 23, 1987

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 24, 1987

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

1
2 INTRODUCED BY Blaylock 34 BILL NO. 34
3 BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A COMMON
6 DEFINITION FOR THE TERM "INDEPENDENT CONTRACTOR" FOR
7 PURPOSES OF THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS'
8 COMPENSATION ACT; REVISING AND UNIFYING THE PROCEDURE FOR
9 DETERMINING AN INDIVIDUAL'S EMPLOYMENT STATUS AS AN
10 INDEPENDENT CONTRACTOR; AMENDING SECTIONS 39-51-201,
11 39-51-203, 39-51-310, 39-51-1109, 39-71-120, AND 39-71-401,
12 MCA; AND PROVIDING AN EFFECTIVE DATE."

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 39-51-201, MCA, is amended to read:

16 "39-51-201. General definitions. As used in this
17 chapter, unless the context clearly requires otherwise, the
18 following definitions apply:

19 (1) "Annual payroll" means the total amount of wages
20 paid by an employer, regardless of the time of payment, for
21 employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement

1 approved by the secretary of labor of the United States, the
2 base period shall be that applicable under the unemployment
3 law of the paying state. For an individual who fails to
4 meet the qualifications of 39-51-2105 due to a temporary
5 total disability as defined in 39-71-116 or a similar
6 statute of another state or the United States, the base
7 period means the first four quarters of the last five
8 quarters preceding the disability if a claim for
9 unemployment benefits is filed within 24 months of the date
10 on which the individual's disability was incurred.

11 (3) "Benefits" means the money payments payable to an
12 individual, as provided in this chapter, with respect to his
13 unemployment.

14 (4) "Benefit year", with respect to any individual,
15 means the 52 consecutive-week period beginning with the
16 first day of the calendar week in which such individual
17 files a valid claim for benefits, except that the benefit
18 year shall be 53 weeks if filing a new valid claim would
19 result in overlapping any quarter of the base year of a
20 previously filed new claim. A subsequent benefit year may
21 not be established until the expiration of the current
22 benefit year. However, in the case of a combined-wage claim
23 pursuant to the arrangement approved by the secretary of
24 labor of the United States, the base period is the period
25 applicable under the unemployment law of the paying state.

1 (5) "Board" means the board of labor appeals provided
2 for in Title 2, chapter 15, part 17.

3 (6) "Calendar quarter" means the period of 3
4 consecutive calendar months ending on March 31, June 30,
5 September 30, or December 31.

6 (7) "Contributions" means the money payments to the
7 state unemployment insurance fund required by this chapter
8 but does not include assessments under 39-51-404(4).

9 (8) "Department" means the department of labor and
10 industry provided for in Title 2, chapter 15, part 17.

11 (9) "Employing unit" means any individual or
12 organization, including the state government, any of its
13 political subdivisions or instrumentalities, any
14 partnership, association, trust, estate, joint-stock
15 company, insurance company, or corporation, whether domestic
16 or foreign, or the receiver, trustee in bankruptcy, trustee
17 or successor thereof, or the legal representative of a
18 deceased person which has or subsequent to January 1, 1936,
19 had in its employ one or more individuals performing
20 services for it within this state, except as provided under
21 subsections (8) and (9) of 39-51-203. All individuals
22 performing services within this state for any employing unit
23 which maintains two or more separate establishments within
24 this state are considered to be employed by a single
25 employing unit for all the purposes of this chapter. Each

1 individual employed to perform or assist in performing the
2 work of any agent or employee of an employing unit is deemed
3 to be employed by such employing unit for the purposes of
4 this chapter, whether such individual was hired or paid
5 directly by such employing unit or by such agent or
6 employee, provided the employing unit has actual or
7 constructive knowledge of the work.

8 (10) "Employment office" means a free public employment
9 office or branch thereof operated by this state or
10 maintained as a part of a state-controlled system of public
11 employment offices or such other free public employment
12 offices operated and maintained by the United States
13 government or its instrumentalities as the department may
14 approve.

15 (11) "Fund" means the unemployment insurance fund
16 established by this chapter to which all contributions and
17 payments in lieu of contributions are required and from
18 which all benefits provided under this chapter shall be
19 paid.

20 (12) "Gross misconduct" means a criminal act, other
21 than a violation of a motor vehicle traffic law, for which
22 an individual has been convicted in a criminal court or has
23 admitted or conduct which demonstrates a flagrant and wanton
24 disregard of and for the rights or title or interest of a
25 fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade occupation, profession, or business.

~~(14)~~(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of

this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

~~(15)~~(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

~~(16)~~(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

~~(17)~~(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

~~†18†~~(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~†19†~~(20) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless
2 and until it is shown to the satisfaction of the department
3 that:

4 (a)--such-individual-has-been-and-will-continue--to--be
5 free--from-control-or-direction-over-the-performance-of-such
6 services--both-under-his-contract-and-in-fact;

7 (b)--such-service-is-either-outside-the-usual-course-of
8 the-business-for-which-such-service--is--performed--or--that
9 such--service--is--performed--outside--of--all-the-places-of
10 business--of--the--enterprise--for--which--such--service--is
11 performed--and

12 (c)--such--individual--is--customarily--engaged--in--an
13 independently-established-trade, occupation, profession, or
14 business the individual is an independent contractor.

15 (5) The term "employment" includes service performed
16 after December 31, 1971, by an individual in the employ of
17 this state or any of its instrumentalities (or in the employ
18 of this state and one or more other states or their
19 instrumentalities) for a hospital or institution of higher
20 education located in this state. The term "employment"
21 includes service performed after July 1, 1975, by all
22 individuals, including without limitations those individuals
23 who work for the state of Montana, its university, any of
24 its colleges, public schools, components or units thereof,
25 or any local government unit and one or more other states or

1 their instrumentalities or political subdivisions whose
2 services are compensated by salary or wages.

3 (6) The term "employment" includes service performed
4 after December 31, 1971, by an individual in the employ of a
5 religious, charitable, scientific, literary, or educational
6 organization.

7 (7) (a) The term "employment" includes the service of
8 an individual who is a citizen of the United States
9 performed outside the United States, except in Canada, after
10 December 31, 1971, in the employ of an American employer,
11 other than service which is considered employment under the
12 provisions of subsection (2) of this section or the parallel
13 provisions of another state's law, if:

14 (i) the employer's principal place of business in the
15 United States is located in this state;

16 (ii) the employer has no place of business in the
17 United States, but:

18 (A) the employer is an individual who is a resident of
19 this state;

20 (B) the employer is a corporation which is organized
21 under the laws of this state; or

22 (C) the employer is a partnership or a trust and the
23 number of the partners or trustees who are residents of this
24 state is greater than the number who are residents of any
25 other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered

under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 3. Section 39-51-310, MCA, is amended to read:

"39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws and disputes arising under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an independent contractor as defined in that chapter."

Section 4. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals. Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the

charging of benefit payments to employers making payment in lieu of contributions ~~is entitled to a review in accordance with Title 27, chapter 47, parts 6 and 7;~~ may appeal to an appeals referee within 10 days after notice of the decision is mailed to that person's last-known address, except the period for timely appeal may be extended by the referee upon a showing of good cause. The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404."

Section 5. Section 39-71-120, MCA, is amended to read:

"39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

~~††~~(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

~~††~~(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless and until it is shown to the satisfaction of the department of labor and industry or the division that the requirements of subsection (1) are met."

Section 6. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments

exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty

1 regulation, or for services as a direct seller engaged in
2 the sale of consumer products to customers primarily in the
3 home;

4 (e) employment for which a rule of liability for
5 injury, occupational disease, or death is provided under the
6 laws of the United States;

7 (f) any person performing services in return for aid
8 or sustenance only, except employment of a volunteer under
9 67-2-105;

10 (g) employment with any railroad engaged in interstate
11 commerce, except that railroad construction work shall be
12 included in and subject to the provisions of this chapter;

13 (h) employment as an official, including a timer,
14 referee, or judge, at a school amateur athletic event,
15 unless the person is otherwise employed by a school
16 district.

17 (3) A sole proprietor or working member of a
18 partnership who holds himself out or considers himself an
19 independent contractor and who is not contracting for
20 agricultural services to be performed on a farm or ranch, or
21 for broker or salesman services performed under a license
22 issued by the board of realty regulation, or for services as
23 a direct seller engaged in the sale of consumer products to
24 customers primarily in the home must elect to be bound
25 personally and individually by the provisions of

1 compensation plan No. 1, 2, or 3, but he may apply to the
2 division for an exemption from the Workers' Compensation Act
3 for himself. The application must be made in accordance with
4 the rules adopted by the division. The division may deny the
5 application only if it determines that the applicant is not
6 an independent contractor. When an application is approved
7 by the division, it is conclusive as to the status of an
8 independent contractor and precludes the applicant from
9 obtaining benefits under this chapter. If the division
10 denies the application for exemption, the applicant may
11 contest the denial by petitioning for review of the decision
12 by an appeals referee in the manner provided for in
13 39-51-1109. An applicant dissatisfied with the decision of
14 the appeals referee may appeal the decision in accordance
15 with the procedure established in 39-51-2403 and 39-51-2404.

16 (4) Each employer shall post a sign in the workplace
17 at the locations where notices to employees are normally
18 posted, informing employees about the employer's current
19 provision of compensation insurance. A workplace is any
20 location where an employee performs any work-related act in
21 the course of employment, regardless of whether the location
22 is temporary or permanent, and includes the place of
23 business or property of a third person while the employer
24 has access to or control over such place of business or
25 property for the purpose of carrying on his usual trade,

1 business, or occupation. The sign will be provided by the
2 division, distributed through insurers or directly by the
3 division, and posted by employers in accordance with rules
4 adopted by the division. An employer who purposely or
5 knowingly fails to post a sign as provided in this
6 subsection is subject to a \$50 fine for each citation."

7 NEW SECTION. Section 7. Procedure for resolving
8 disputes regarding independent contractor status. (1) If an
9 individual, employer, or insurer has a dispute as to whether
10 an individual is an independent contractor or an employee as
11 defined in this chapter, any party may petition a department
12 of labor and industry appeals referee for resolution of the
13 dispute in accordance with 39-51-1109, and may appeal from a
14 decision of the appeals referee in the same manner as
15 prescribed in 39-51-2403 and 39-51-2404.

16 (2) If a claimant and insurer have a dispute over
17 benefits and the dispute involves an issue of whether the
18 claimant is an independent contractor or employee as defined
19 in this chapter, either party may petition the workers'
20 compensation judge for resolution of the dispute in
21 accordance with 39-71-2905.

22 (3) Notwithstanding the provisions of subsection (1),
23 an individual may apply to the division for an exemption
24 from the Workers' Compensation Act in accordance with
25 39-71-401.

1 NEW SECTION. Section 8. Extension of authority. Any
2 existing authority of the department of labor and industry
3 to make rules on the subject of the provisions of this act
4 is extended to the provisions of this act.

5 NEW SECTION. Section 9. Codification instruction.
6 Section 7 is intended to be codified as an integral part of
7 Title 39, chapter 71, part 4, and the provisions of Title
8 39, chapter 71, part 4, apply to section 7.

9 NEW SECTION. Section 10. Effective date. This act is
10 effective July 1, 1987.

-End-

CHAIRMAN--SEN. JOHN "J.D." LYNCH
NORMAL SCHEDULE==> SITE: ROOM 413/415

DAYS: T-T-S

TIME: 1:00 P.M.

SECRETARY--JULIE RADEMACHER

--BILL NO--	REFER DATE	HEARING DATE	CONSIDERATION DATES	COMMITTEE ACTION	REREFERRED TO COMM	DATE OUT
SB0157	1/20	1/29	01/29/87	ADVERSE REPORT	01/20/87	01/29/87
MANNING, RICHARD E.			WORKERS' COMPENSATION PLAN 2 EMPLOYER GIVE 20 DAYS NOTICE IF CANCELS POLICY			
SB0169	1/21	1/27	01/27/87; 02/12/87	4/4 tie	01/21/87	
KEATING, THOMAS F.			REPEAL LAW REQUIRING DEPT OF ADMIN. TO SET EQUAL PAY FOR COMPARABLE WORTH			
SB0234	1/27	2/05	02/05/87; 02/12/87	4/4 tie		
HALLIGAN, MIKE			ALLOW LABOR COMMISSIONER DISCRETION IN HANDLING WAGE CLAIM ASSIGNMENTS			
SB0242	1/29	2/03	02/03/87; 02/05/87	DO PASS	01/29/87	02/05/87
LYNCH, JOHN (J.D.)			ALLOW WORKERS' COMPENSATION DIVISION ACCESS TO EMPLOYER PREMISES			
SB0280	2/05	2/12	02/12/87; 02/17/87	PASS AS AMENDED	02/04/87	02/17/87
MCCALLUM, GEORGE			OUT-OF-STATE WORKER WORKING IN STATE SUBJECT TO MONTANA WORKERS' COMP. LAWS			
SB0313	2/10	2/17	02/17/87	DO PASS	02/10/87	02/17/87
BLAYLOCK, CHET			REVISE PROCEDURE FOR DETERMINING STATUS AS AN INDEPENDENT CONTRACTOR			
SB0314	2/10	2/17	02/17/87	PASS AS AMENDED	02/10/87	02/17/87
HAMMOND, H.W. (SWEDE)			EXCLUDE FAIR WORKERS FROM PAYMENT OF OVERTIME COMPENSATION			
SB0315	2/10	2/14	2/14; 2/17; 2/18; 2/19; 2/21	PASS AS AMENDED	02/10/87	02/21/87
WILLIAMS, BOB			GENERALLY REVISE WORKERS' COMPENSATION LAWS			
SB0319	2/11	2/19	02/19/87	DO PASS	02/11/87	02/17/87
MAZUREK, JOSEPH P.			EMPLOYMENT OF WATER COMMISSIONER EXEMPT FROM WORKERS' COMPENSATION COVERAGE			
SB0330	2/12	2/14	02/14/87		02/11/87	
VAN VALKENBURG, FRED			GENERALLY REVISE WORKERS' COMPENSATION LAWS			
SB0350	2/16	2/19	02/19/87	TABLED	02/17/87	02/17/87
WALKER, MIKE			LICENSURE OF BOILER AND PRESSURE VESSEL INSTALLERS BY BOARD OF PLUMBERS			

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS
MONTANA STATE SENATE

February 17, 1987

The twelfth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on February 17, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF SENATE BILL NO. 313: Senator Chey Blaylock, Senate District 43, sponsor of the bill, stated it was requested by the Department of Labor and Industry. He said the reason for this bill is the difficulty with the definition of independent contractor. With the different definitions independent contractors receive, there are different interpretations from the Unemployment Compensation Division and the Workers' Compensation Division. This bill is an attempt to straighten out the interpretation.

PROPOSERS: Ms. Peg Hartman, representing the Department of Labor and Industry, stated this bill is an attempt to make the process easier for employers. It provides one process for the employers and the department to follow, and will decrease the regulatory authority of the department. On page 9 there were three ways the Unemployment Insurance Division made a decision for independent contractors. It was called the A, B, C Test. This language will be stricken in SB 313, and on page 5, two of these tests will be reinserted in the definition section. This will only change for independent contractor issues.

Mr. Karl Englund, representing the Montana Trial Lawyers Association, stated this bill provides a simple definition for independent contractors in regards to Unemployment benefits and Workers' Compensation benefits. The Trial Lawyers feel a single definition should apply in both instances. Mr. Englund feels there is a problem with the provision on page 12, lines 13-19. The determination of independent contractor status when dealing with a Workers' Compensation situation is removed from the Workers' Compensation Court and put in the Board of Labor. If the Workers' Compensation Court is terminated by legislation presented during this session, and everything dealing with unemployment insurance and workers' compensation is put into the 3 person

administrative panel as in SB 315, then this provision would be necessary. If the Workers' Compensation Court remains, this would ask a person with a Workers' Compensation problem that is now dealt with in the Workers' Compensation Court, to have the Board of Labor Appeals deal with the independent contractor. The Workers' Compensation Court handles these problems more expeditiously than the Board of Labor Appeals. Therefore, a delay is created in the system. Mr. Englund is concerned with the provision, but they support the intent of the bill to have a standardized definition.

OPPONENTS: Mr. Dennis Bacon, representing himself, stated this bill would greatly affect his Bozeman Montana trucking firm. The bill does not really define the independent contractor. On page 5, line 14, it states the independent contractor will be free from control, but it does not say how much control. The bill also states, "engaged in an independently established trade or occupation", and Mr. Bacon said this needs to be clarified. Mr. Bacon feels under current law, the trucking contractors can make a profit, but if this new statute is passed they will not be able to make a profit. Mr. Bacon feels this bill would have a critical effect on the independent contractor.

QUESTIONS (OR DISCUSSION) ON SENATE BILL NO. 313: Senator Gage asked Ms. Peg Hartman if during the 1983 legislative session there was something that allowed agricultural situations or people who were providing contract services to apply for an exemption from Workers' Compensation taxes. He asked if this bill now allows this for everyone. Ms. Hartman replied the only part that would change is if they apply for an individual contractor's exemption and they do not get it they would still use the same process for appeal as other people. Ms. Hartman pointed out on page 12, line 17, it would be used only in cases not concerning benefits. Ms. Hartman agreed with Mr. Bacon that the definition of independent contractor is difficult to understand, but this law does not change the substance of that definition, it just changes the process.

Senator Gage asked Ms. Hartman why they would be included in this when they are not involved with the benefits. Ms. Hartman replied the auditors routinely audit employers and they might add the record of the employer and find people on the payroll records that are not being reported. The auditor would then inquire why this person is not being reported for tax purposes.

Senator Keating asked Mr. Bacon if he had some people that are employees and other people that are independent contractors that work as drivers. Mr. Bacon replied yes. Senator Keating asked Mr. Bacon if he furnished trucks for the independent contractors. Mr. Bacon replied yes. Senator Keating asked Mr. Bacon if he knows of any independent contractors who have been successful in becoming independent contractors with exemptions. Mr. Bacon said he did not know the answer. Senator Keating stated if you have a distinct group of people that are well defined and can be considered independent contractors, an exemption could be given to that class of people instead of only to individuals. Senator Keating asked Mr. Bacon if this would affect him. Mr. Bacon replied yes, because it gives actual control and it only allows him to appeal at the district court. Senator Keating stated that is a technical phrase which is actually meaningless; it is just standard language in every bill.

Senator Lynch asked Mr. Bacon how this bill will cost him money. Mr. Bacon replied it will cost him money because the provision that allows him to tell people they are independent contractors is being deleted.

Senator Lynch asked Ms. Hartman if this will cost Mr. Bacon money. Mr. Hartman stated it should make it easier because of the deletion of that section. Under current law you have to meet 3 requirements to be an independent contractor. Under the new bill he would only need to meet 2 requirements.

Senator Thayer asked Ms. Hartman how the definition of independent contractor in this bill agrees or disagrees with the new language in SB 315 or SB 330. Ms. Hartman replied this bill assumes the existence of a Workers' Compensation Court. If there is a change in the existence of the Workers' Compensation Court, they have drafted coordination language should it become necessary to use. Senator Thayer stated there is new language in both SB 315 and SB 330 that deals with the independent contractor section of the law. He asked Ms. Hartman if she could give a comparison of differences to the committee. Ms. Hartman stated there is almost no change. The changes reflected in both bills are several minor wording changes. They basically agree except for the existence of the court.

Senator Lynch said Ms. Hartman pointed out the objection by Karl Englund applies only in areas not concerning benefits. Senator Lynch asked Mr. Englund if he still had an objection. Mr. Englund replied he interpreted that to mean they would make the determination for the independent contractor and

the benefit section would return to the court and the Board would have jurisdiction to decide benefit levels. Mr. Englund stated he would not have an objection if that is what the bill does. Mr. Englund stated if the dispute could lead to benefits then it stays with the court. He would have no objection to that.

There being no further questions of the committee, Senator Blaylock closed.

CONSIDERATION OF SENATE BILL NO. 314: Senator Swede Hammond, Senate District 9, sponsor of the bill stated this is an act to exclude fair workers from payment of unemployment compensation. This bill amends Section 39-3-406, MCA. He said this bill would exclude part time workers from the unemployment compensation fees, as the federal law already does.

PROPONENTS: Mr. Bill Chiesa, representing Metra Park, gave testimony in support of SB 314. His testimony is attached as Exhibit 1.

OPPONENTS: Mr. Jim Murry, representing the Montana State AFL-CIO, stated they have problems with this legislation. Attempts are being made to expand exclusion to this and other worker protection laws. He said they are particularly concerned with exclusions to the unemployment compensation coverage. The state of Montana was ranked 10th in the nation for unemployment recently. They also learned 18.2% of the unemployed workers in Montana were receiving unemployment compensation benefits. He said, the point is more workers are not qualifying for unemployment compensation benefits. The largest reason these people are not qualifying for unemployment benefits is the duration of unemployment. They are exhausting their unemployment compensation benefits and then are not requalifying for benefits. The result is many workers with a good work history, who do not want benefits but would just like to work, have to be on unemployment benefits to take care of their family. This bill would expand the law further to make it more difficult. Mr. Murry urged the committee to oppose this bill.

QUESTIONS (OR DISCUSSION) OF SENATE BILL 314: Senator Blaylock asked Mr. Murry if an employee worked only a week at the fair, would they not be eligible for unemployment benefits. Mr. Murry stated there are people who do not qualify for benefits for working a week or two someplace. He said he does not have these statistics with him, but there are such cases. Many people who have part-time employment are depending on that work to requalify them for benefits.

DISPOSITION OF SENATE BILL NO. 313: Senator Keating made a motion that SB 313 DO PASS. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 314: Senator Thayer made a motion SB 314 be amended. The motion carried unanimously. Senator Keating made a motion that SB 314 AND AS AMENDED, DO PASS. The motion CARRIED UNANIMOUSLY.

DISPOSITION OF SENATE BILL NO. 103: Senator Thayer made a motion that SB 103 be amended to include the grey bill's amendments. The motion CARRIED UNANIMOUSLY.

FURTHER CONSIDERATION OF SENATE BILL NO. 103: Senator Blaylock asked what exactly will this bill do. Senator Thayer stated there will either be a plan or they will not have a plan. Senator Blaylock asked Mr. Lloyd Lockrem whether an employee has a choice to go in to a fringe benefit package. Mr. Lockrem replied no, the fringes for a non-union contractor and non-union employee are not negotiated like the process of a collective bargaining unit or a group of contractors. These fringe benefits are predetermined fringes imposed on these contractors by state statutes.

DISPOSITION OF SENATE BILL NO. 103: Senator Thayer made a motion that SB 103 AND AS AMENDED, DO PASS. The motion CARRIED 7-1. See attached roll call vote sheet.

FURTHER DISCUSSION OF SENATE BILL NO. 34: Senator Ethel Harding, Senate District 25, sponsor of this bill stated she has made her own fiscal note, and that it was based on information given by the Department of Labor and Industry. See Exhibit 2. The Department of Labor and Industry informed Senator Harding there was no available data to figure the fiscal impact exactly.

Senator Lynch asked Ms. Hartman what this bill would cost the unemployment fund. Ms. Hartman replied a \$10 million biennium effect.

DISPOSITION OF SENATE BILL NO. 34: Senator Galt made a motion to move the amendments. The motion CARRIED UNANIMOUSLY.

FURTHER DISCUSSION OF SENATE BILL NO. 34: Senator Gage asked Ms. Hartman if these rates were adjusted every year. Ms. Hartman replied yes. Senator Gage asked if the fiscal impact would only have an effect of one year. Ms. Hartman replied yes. Senator Thayer asked Ms. Hartman what month the adjustment would be made. Ms. Hartman stated according

ROLL CALLLABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date Feb. 17,

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

CC Labre

Feb. 17, 1987

(

[illegible]

(Please leave prepared statement, with Secretary)

NAME: Dennis Bacon DATE: 2-17

ADDRESS: 23 Border Lane Bozeman, MT

PHONE: 587-7742

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 313

DO YOU: SUPPORT? AMEND? OPPOSE? X

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date Feb 17, 1987 Bill No. 3/3 Time 1:50

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Do Pass

STANDING COMMITTEE REPORT

February 17, 1937

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration.....SENATE BILL..... No. 313

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color

REVISE PROCEDURE FOR DETERMINING STATUS AS AN INDEPENDENT CONTRACTOR

SENATE BILL

313

Respectfully report as follows: That..... No.....

DO PASS

~~DO NOT PASS~~

Sen. John "J.D." Lynch

Chairman.

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR

COMMITTEE

SENATE BILL NUMBER	ENTERED COM. DATE	DATE CON- SIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CON- CURRED IN DATE	BE NOT CON- CURRED IN DATE	BE CON- CURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
299	2/24/87	3/13/87	3/13/87					3/13/87			
313	2/24/87	3/13/87	3/13/87							3/13/87	
314	2/24/87	3/13/87	tabled 3/13/87								
315	3/3/87	3/9/87	3/26/87							3/26/87	
318	2/23/87	3/18/87	3/18/87					3/18/87			
319	2/24/87	3/13/87	tabled 3/13/87								
328	3/3/87	3/10/87	3/26/87							3/26/87	
341	3/3/87	3/10/87	3/20/87							3/20/87	
353	3/13/87	3/20/87	3/26/87							3/26/87	
359	3/3/87	3/18/87	3/18/87							3/18/87	
360	3/3/87	3/18/87	3/20/87					3/20/87			
364	3/03/87	3/11/87	3/11/87					3/11/87			
371	3/13/87	3/20/87	3/26/87							3/26/87	
374	2/24/87	3/17/87	3/17/87					3/17/87			

See a separate sheet for Senate Bills, House Bills, and Resolutions.

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

March 13, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on March 13, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

SENATE BILL NO. 280 - Senator George McCallum, Senate District No. 26, Plains, sponsored the bill. Senator McCallum stated that there are problems with the bill and would cause a greater amount of unemployment in Montana. He requested that the bill be tabled.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 280

Rep. Jones moved that Senate Bill No. 280 BE TABLED. The motion carried unanimously.

SENATE BILL NO. 319 - Senator Joseph Mazurek, Senate Bill No. 23, Helena, sponsored the bill. Senator Mazurek stated that this bill addressed workers' compensation, and that the Attorney General's opinion was that a water commissioner is an employee of the district judge for workers' compensation purposes. He said a water commissioner is someone that the district judge appoints, sometimes on a temporary basis, to investigate and resolve disputes between irrigators on adjudicated streams, and are full time employees of the irrigation district and would be covered by workers' compensation insurance. He commented that these commissioners that the bill addresses are very limited, appointed for a short time, during an irrigation season to mediate disputes between water users on a particular stream. He said that the district judge does not have funds at his disposal to have workers' compensation coverage for a commissioner that he might hire on a two or three week basis in the summer, therefore, he requested that this bill be introduced.

PROPONENTS

None.

OPPONENTS

None.

QUESTIONS

Rep. Swysgood asked if the ditch rider that works daily, and is employed for the total irrigation season, from May through August, would be excluded from coverage. Mr. Robinson responded that they are employees of the irrigation district and are covered under the irrigation district insurance policy.

Rep. Driscoll asked Mr. Robinson if the judge was covered by workers' compensation. Mr. Robinson responded that the judge was covered under the state fund policy.

Rep. Driscoll asked if this person was not covered by workers' compensation and they went to mediate a dispute about water and were in a state car or one that belonged to the court and he was injured, could he bring a law suit against the court because they did not have workers' compensation. Mr. Robinson responded that they would be put under the court's workers' compensation policy.

Rep. Simon stated the court has a policy on the judge and the other employees of the court, but this man is not an employee of the court, he is an employee of the district judge and the judge does not have a policy; what kind of problems would he have in obtaining the coverage. Mr. Robinson responded that if the judge did not have a policy and there was a problem that went back to the judge, the judge would be responsible for the injury, or he would have to get a policy.

CLOSING

Sen. Mazurek stated he has submitted correspondence between Judge Lesley, Judge Loble, and two Attorney General's opinions which addresses the problem. He said they are concerned about the problem and would like to have it solved. He commented the feeling of the judges was that it comes up so infrequently in many areas that it would be appropriate to exempt those employees. Exhibit Nos. 1-4.

SENATE BILL NO. 313 - Senator Chet Blaylock, Senate Bill No. 43, Laurel, sponsored the bill. Senator Blaylock stated that this bill was at the request of the Department of Labor and Industry to clarify the definition of the independent contractor.

Peggy Hartman, Commissioner of Labor and Industry. Ms. Hartman stated this bill would make it easier for employers by making one definition of the independent contractor, one determination, one appeal process, and it does not apply to the benefit portion of workers' compensation.

PROPOSERS

None.

OPPOSERS

None.

CLOSING

Senator Blaylock made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 313

Rep. Jones moved that Senate Bill No. 313 BE CONCURRED IN. The motion carried unanimously.

ACTION ON SENATE BILL NO. 319

Rep. Driscoll moved that Senate Bill No. 319 BE NOT CONCURRED IN.

Rep. Simon commented that the bill had many problems, it was even unclear as to how the water commissioners were paid, or who their employer was.

Rep. Brandewie commented that this bill should not be passed, and it can't be clarified. He said if someone gets injured, someone has to pay the workers' compensation, and if exceptions are made it could lead to many problems, and expose many employees to be without coverage.

Rep. Nisbet moved a substitute motion that Senate Bill 319 BE TABLED. The motion carried unanimously.

SENATE BILL NO. 299 - Senator Darryl Meyer, Senate District No. 17, Great Falls, sponsored the bill. Senator Meyer stated this bill was a statute of limitations under the Securities Act, and is requested by the State Auditor.

Kim Schulke, Deputy Securities Commissioner, presented a section by section review of the bill, and statutes of limitations for securities actions in other states. Exhibit Nos. 5 and 6.

PROPOSERS

Bruce MacKenzie, General Counsel, DA Davidson and Company. Mr. MacKenzie stated the unique feature of the securities law is that it imposes liability on individuals who are not

Rep. Swysgood asked if the fair operates to make a profit. Mr. Chiesa responded that by state law they cannot operate to make a profit, but they have to operate within their budget, and they receive tax funds. He said that during the actual 8 day event, they generate more revenue than expenses.

CLOSING

Rep. Thomas made no further comments.

EXECUTIVE ACTION

ACTION ON SENATE BILL NO. 313

Chairman Kitselman moved to reconsider action on Senate Bill No. 313. The motion carried unanimously.

Rep. Driscoll moved the amendment, on page 13, line 21, strike line 21 in its entirety, and line 22 through the word "that". The motion carried unanimously.

Rep. Driscoll moved that Senate Bill No. 313 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 299

Rep. Swysgood moved that Senate Bill No. 299 BE CONCURRED IN. The motion carried unanimously.

ACTION ON SENATE BILL NO. 314

Rep. Hansen moved that Senate Bill NO. 314 BE NOT CONCURRED IN.

Rep. Thomas moved a substitute motion that Senate Bill No. 314 BE CONCURRED IN.

Rep. Brandewie commented that it was not right to save money at the expense of people that are working at \$3.60 per hour.

Rep. Bachini commented that he sees no need for the bill.

Rep. Pavlovich made a substitute motion that Senate Bill No. 314 BE TABLED. The motion carried unanimously.

ACTION ON SENATE BILL NO. 186

Rep. Thomas moved that Senate Bill No. 186 BE CONCURRED IN.

Rep. Thomas moved the amendments proposed by the Insurance Commissioner. The motion carried unanimously.

DAILY ROLL CALL

BUSINESS & LABOR

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date MARCH 13, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

STANDING COMMITTEE REPORT

MARCH 13

19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report SENATE BILL NO. 313

☐ do pass
☐ do not pass

☒ be concurred in
☐ be not concurred in

☒ as amended
☐ statement of intent attached

REP. LES KITSelman

Chairman

AMENDMENTS AS FOLLOWS:

1) Page 13, lines 21 and 22

Strike: line 21 in its entirety and line 22
through "that"

Rep. Jerry Driscoll will sponsor

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VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. SENATE BILL NO. 313

DATE MARCH 13, 1987

SPONSOR SENATOR CHET BLAYLOCK

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
<i>Ray Hartman</i>	<i>Dept. of High Tech.</i>		

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

SENATE BILL NO. 313

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A COMMON DEFINITION FOR THE TERM "INDEPENDENT CONTRACTOR" FOR PURPOSES OF THE UNEMPLOYMENT INSURANCE LAW AND THE WORKERS' COMPENSATION ACT; REVISING AND UNIFYING THE PROCEDURE FOR DETERMINING AN INDIVIDUAL'S EMPLOYMENT STATUS AS AN INDEPENDENT CONTRACTOR; AMENDING SECTIONS 39-51-201, 39-51-203, 39-51-310, 39-51-1109, 39-71-120, AND 39-71-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-51-201, MCA, is amended to read:

"39-51-201. General definitions. As used in this chapter, unless the context clearly requires otherwise, the following definitions apply:

(1) "Annual payroll" means the total amount of wages paid by an employer, regardless of the time of payment, for employment during a calendar year.

(2) "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year. However, in the case of a combined-wage claim pursuant to the arrangement

approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state. For an individual who fails to meet the qualifications of 39-51-2105 due to a temporary total disability as defined in 39-71-116 or a similar statute of another state or the United States, the base period means the first four quarters of the last five quarters preceding the disability if a claim for unemployment benefits is filed within 24 months of the date on which the individual's disability was incurred.

(3) "Benefits" means the money payments payable to an individual, as provided in this chapter, with respect to his unemployment.

(4) "Benefit year", with respect to any individual, means the 52 consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim for benefits, except that the benefit year shall be 53 weeks if filing a new valid claim would result in overlapping any quarter of the base year of a previously filed new claim. A subsequent benefit year may not be established until the expiration of the current benefit year. However, in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period is the period applicable under the unemployment law of the paying state.

1 (5) "Board" means the board of labor appeals provided
2 for in Title 2, chapter 15, part 17.

3 (6) "Calendar quarter" means the period of 3
4 consecutive calendar months ending on March 31, June 30,
5 September 30, or December 31.

6 (7) "Contributions" means the money payments to the
7 state unemployment insurance fund required by this chapter
8 but does not include assessments under 39-51-404(4).

9 (8) "Department" means the department of labor and
10 industry provided for in Title 2, chapter 15, part 17.

11 (9) "Employing unit" means any individual or
12 organization, including the state government, any of its
13 political subdivisions or instrumentalities, any
14 partnership, association, trust, estate, joint-stock
15 company, insurance company, or corporation, whether domestic
16 or foreign, or the receiver, trustee in bankruptcy, trustee
17 or successor thereof, or the legal representative of a
18 deceased person which has or subsequent to January 1, 1936,
19 had in its employ one or more individuals performing
20 services for it within this state, except as provided under
21 subsections (8) and (9) of 39-51-203. All individuals
22 performing services within this state for any employing unit
23 which maintains two or more separate establishments within
24 this state are considered to be employed by a single
25 employing unit for all the purposes of this chapter. Each

1 individual employed to perform or assist in performing the
2 work of any agent or employee of an employing unit is deemed
3 to be employed by such employing unit for the purposes of
4 this chapter, whether such individual was hired or paid
5 directly by such employing unit or by such agent or
6 employee, provided the employing unit has actual or
7 constructive knowledge of the work.

8 (10) "Employment office" means a free public employment
9 office or branch thereof operated by this state or
10 maintained as a part of a state-controlled system of public
11 employment offices or such other free public employment
12 offices operated and maintained by the United States
13 government or its instrumentalities as the department may
14 approve.

15 (11) "Fund" means the unemployment insurance fund
16 established by this chapter to which all contributions and
17 payments in lieu of contributions are required and from
18 which all benefits provided under this chapter shall be
19 paid.

20 (12) "Gross misconduct" means a criminal act, other
21 than a violation of a motor vehicle traffic law, for which
22 an individual has been convicted in a criminal court or has
23 admitted or conduct which demonstrates a flagrant and wanton
24 disregard of and for the rights or title or interest of a
25 fellow employee or his employer.

(13) "Hospital" means an institution which has been licensed, certified, or approved by the state as a hospital.

(14) "Independent contractor" means an individual who renders service in the course of an occupation and:

(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(b) is engaged in an independently established trade occupation, profession, or business.

(15) (a) "Institution of higher education", for the purposes of this part, means an educational institution which:

(i) admits as regular students only individuals having a certificate of graduation from a high school or the recognized equivalent of such a certificate;

(ii) is legally authorized in this state to provide a program of education beyond high school;

(iii) provides an educational program for which it awards a bachelor's or higher degree or provides a program which is acceptable for full credit toward such a degree, a program of postgraduate or postdoctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(iv) is a public or other nonprofit institution.

(b) Notwithstanding any of the foregoing provisions of

this subsection, all colleges and universities in this state are institutions of higher education for purposes of this part.

(16) "State" includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(17) "Unemployment insurance administration fund" means the unemployment insurance administration fund established by this chapter from which administrative expenses under this chapter shall be paid.

(18) (a) "Wages" means all remuneration payable for personal services, including commissions and bonuses, the cash value of all remuneration payable in any medium other than cash, and backpay received pursuant to a dispute related to employment. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the department.

(b) The term "wages" does not include:

(i) the amount of any payment made to or on behalf of an employee by an employer on account of:

(A) retirement;

(B) sickness or accident disability;

(C) medical and hospitalization expenses in connection with sickness or accident disability; or

(D) death;

(ii) remuneration paid by any county welfare office from public assistance funds for services performed at the direction and request of such county welfare office.

~~(18)~~(19) "Week" means a period of 7 consecutive calendar days ending at midnight on Saturday.

~~(19)~~(20) An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for 1 week of total unemployment."

Section 2. Section 39-51-203, MCA, is amended to read:

"39-51-203. Employment defined. (1) "Employment", subject to other provisions of this section, means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(2) (a) The term "employment" includes an individual's entire service performed within or both within and without this state if:

(i) the service is localized in this state; or

(ii) the service is not localized in any state but some of the service is performed in this state and:

(A) the base of operations or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or

(B) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) Service is considered to be localized within a state if:

(i) the service is performed entirely within such state; or

(ii) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(3) Service not covered under subsection (2) of this section and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment insurance law of any other state or of the federal government is considered to be employment subject to this chapter if the individual performing such services is a resident of this state and the department approves the election of the employing unit for whom such services are performed that the entire service of such individual is considered to be employment subject to this chapter.

(4) Service performed by an individual for wages is

1 considered to be employment subject to this chapter unless
2 and until it is shown to the satisfaction of the department
3 that:

4 ~~{a}--such-individual-has-been-and-will-continue--to--be~~
5 ~~free--from-control-or-direction-over-the-performance-of-such~~
6 ~~services, both under his contract and in fact,~~

7 ~~{b}--such-service-is-either-outside-the-usual-course-of~~
8 ~~the-business-for-which-such-service--is--performed--or--that~~
9 ~~such--service--is--performed--outside--of--all-the-places-of~~
10 ~~business--of--the--enterprise--for--which--such--service--is~~
11 ~~performed, and~~

12 ~~{c}--such--individual--is--customarily--engaged--in--an~~
13 ~~independently-established-trade, occupation, profession, or~~
14 ~~business the individual is an independent contractor.~~

15 (5) The term "employment" includes service performed
16 after December 31, 1971, by an individual in the employ of
17 this state or any of its instrumentalities (or in the employ
18 of this state and one or more other states or their
19 instrumentalities) for a hospital or institution of higher
20 education located in this state. The term "employment"
21 includes service performed after July 1, 1975, by all
22 individuals, including without limitations those individuals
23 who work for the state of Montana, its university, any of
24 its colleges, public schools, components or units thereof,
25 or any local government unit and one or more other states or

1 their instrumentalities or political subdivisions whose
2 services are compensated by salary or wages.

3 (6) The term "employment" includes service performed
4 after December 31, 1971, by an individual in the employ of a
5 religious, charitable, scientific, literary, or educational
6 organization.

7 (7) (a) The term "employment" includes the service of
8 an individual who is a citizen of the United States
9 performed outside the United States, except in Canada, after
10 December 31, 1971, in the employ of an American employer,
11 other than service which is considered employment under the
12 provisions of subsection (2) of this section or the parallel
13 provisions of another state's law, if:

14 (i) the employer's principal place of business in the
15 United States is located in this state;

16 (ii) the employer has no place of business in the
17 United States, but:

18 (A) the employer is an individual who is a resident of
19 this state;

20 (B) the employer is a corporation which is organized
21 under the laws of this state; or

22 (C) the employer is a partnership or a trust and the
23 number of the partners or trustees who are residents of this
24 state is greater than the number who are residents of any
25 other state; or

(iii) none of the criteria of sections (7)(a)(i) and (7)(a)(ii) of this subsection are met but the employer has elected coverage in this state or, the employer having failed to elect coverage in any state, the individual has filed a claim for benefits based on such service under the law of this state.

(b) An "American employer", for purposes of this subsection, means a person who is:

(i) an individual who is a resident of the United States;

(ii) a partnership if two-thirds or more of the partners are residents of the United States;

(iii) a trust if all of the trustees are residents of the United States; or

(iv) a corporation organized under the laws of the United States or of any state.

(8) Agricultural labor exempted under 39-51-204 is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$20,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 10 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has agricultural employment, all employees are covered

under the chapter regardless of the amount of money expended for agricultural purposes.

(9) Domestic service exempted under 39-51-204(1)(b) is considered employment subject to this chapter effective January 1, 1978, whenever the employing unit pays \$1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the chapter and has domestic employment, all employees are covered under the chapter regardless of the amount of money expended for domestic purposes."

Section 3. Section 39-51-310, MCA, is amended to read:

"39-51-310. Function of board. The board shall act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws and disputes arising under Title 39, chapter 71, not concerning benefits, regarding whether an individual is an employee or an independent contractor as defined in that chapter."

Section 4. Section 39-51-1109, MCA, is amended to read:

"39-51-1109. Tax appeals. Any person aggrieved by any decision, determination, or redetermination of the department involving contribution liability, contribution rate, application for refund, employment status, or the

charging of benefit payments to employers making payment in lieu of contributions ~~is entitled to a review in accordance with Title 27, chapter 47, parts 6 and 7.~~ may appeal to an appeals referee within 10 days after notice of the decision is mailed to that person's last-known address, except the period for timely appeal may be extended by the referee upon a showing of good cause. The decision of the appeals referee and any appeal therefrom must be made in the same manner as prescribed in 39-51-2403 and 39-51-2404."

Section 5. Section 39-71-120, MCA, is amended to read:

"39-71-120. Independent contractor defined. (1) An "independent contractor" is one who renders service in the course of an occupation and:

(1)(a) has been and will continue to be free from control or direction over the performance of the services, both under his contract and in fact; and

(2)(b) is engaged in an independently established trade, occupation, profession, or business.

(2) An individual performing services for remuneration is considered to be an employee under this chapter unless and until it is shown to the satisfaction of the department of labor and industry or the division that the requirements of subsection (1) are met."

Section 6. Section 39-71-401, MCA, is amended to read:

"39-71-401. Employments covered and employments

exempted. (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 39-71-117 and to all employees as defined in 39-71-118. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under this chapter and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) household and domestic employment;

(b) casual employment as defined in 39-71-116(3) except employment of a volunteer under 67-2-105;

(c) employment of members of an employer's family dwelling in the employer's household;

(d) employment of sole proprietors or working members of a partnership other than those who consider themselves or hold themselves out as independent contractors and who are not contracting for agricultural services to be performed on a farm or ranch, or for broker or salesman services performed under a license issued by the board of realty

1 regulation, or for services as a direct seller engaged in
2 the sale of consumer products to customers primarily in the
3 home;

4 (e) employment for which a rule of liability for
5 injury, occupational disease, or death is provided under the
6 laws of the United States;

7 (f) any person performing services in return for aid
8 or sustenance only, except employment of a volunteer under
9 67-2-105;

10 (g) employment with any railroad engaged in interstate
11 commerce, except that railroad construction work shall be
12 included in and subject to the provisions of this chapter;

13 (h) employment as an official, including a timer,
14 referee, or judge, at a school amateur athletic event,
15 unless the person is otherwise employed by a school
16 district.

17 (3) A sole proprietor or working member of a
18 partnership who holds himself out or considers himself an
19 independent contractor and who is not contracting for
20 agricultural services to be performed on a farm or ranch, or
21 for broker or salesman services performed under a license
22 issued by the board of realty regulation, or for services as
23 a direct seller engaged in the sale of consumer products to
24 customers primarily in the home must elect to be bound
25 personally and individually by the provisions of

1 compensation plan No. 1, 2, or 3, but he may apply to the
2 division for an exemption from the Workers' Compensation Act
3 for himself. The application must be made in accordance with
4 the rules adopted by the division. The division may deny the
5 application only if it determines that the applicant is not
6 an independent contractor. When an application is approved
7 by the division, it is conclusive as to the status of an
8 independent contractor and precludes the applicant from
9 obtaining benefits under this chapter. If the division
10 denies the application for exemption, the applicant may
11 contest the denial by petitioning for review of the decision
12 by an appeals referee in the manner provided for in
13 39-51-1109. An applicant dissatisfied with the decision of
14 the appeals referee may appeal the decision in accordance
15 with the procedure established in 39-51-2403 and 39-51-2404.

16 (4) Each employer shall post a sign in the workplace
17 at the locations where notices to employees are normally
18 posted, informing employees about the employer's current
19 provision of compensation insurance. A workplace is any
20 location where an employee performs any work-related act in
21 the course of employment, regardless of whether the location
22 is temporary or permanent, and includes the place of
23 business or property of a third person while the employer
24 has access to or control over such place of business or
25 property for the purpose of carrying on his usual trade,

business, or occupation. The sign will be provided by the division, distributed through insurers or directly by the division, and posted by employers in accordance with rules adopted by the division. An employer who purposely or knowingly fails to post a sign as provided in this subsection is subject to a \$50 fine for each citation."

NEW SECTION. Section 7. Procedure for resolving disputes regarding independent contractor status. (1) If an individual, employer, or insurer has a dispute as to whether an individual is an independent contractor or an employee as defined in this chapter, any party may petition a department of labor and industry appeals referee for resolution of the dispute in accordance with 39-51-1109, and may appeal from a decision of the appeals referee in the same manner as prescribed in 39-51-2403 and 39-51-2404.

(2) If a claimant and insurer have a dispute over benefits and the dispute involves an issue of whether the claimant is an independent contractor or employee as defined in this chapter, either party may petition the workers' compensation judge for resolution of the dispute in accordance with 39-71-2905.

(3) Notwithstanding the provisions of subsection (1), an individual may apply to the division for an exemption from the Workers' Compensation Act in accordance with 39-71-401.

NEW SECTION. Section 8. Extension of authority. Any existing authority of the department of labor and industry to make rules on the subject of the provisions of this act is extended to the provisions of this act.

NEW SECTION. Section 9. Codification instruction. Section 7 is intended to be codified as an integral part of Title 39, chapter 71, part 4, and the provisions of Title 39, chapter 71, part 4, apply to section 7.

NEW SECTION. Section 10. Effective date. This act is effective July 1, 1987.

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